*****

In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 14.8.2007.

Sunita and others. ... Appellants.

vs

Balbir Singh and others. .... Respondents.

Before : Hon'ble Mr. Justice R.S.Madan.

Present: Mr.Pankaj Midha,Advocate,for the appellants.

Judgment.

R.S.Madan, J.

This appeal has been directed against the order dated 20.12.2006, passed by Ms.Anita Chaudhry, in petition no.54-MACT of 2004 filed under Section 166 of the Motor Vehicles Act, whereby she awarded a sum of Rs.3,80,000/-, as compensation, besides interest at the rate of 6% per annum from the date of institution of petition till realisation, to the legal heirs of deceased Ramesh Kumar.

The facts.

On 1.3.2004, Purshotam along with Ramesh loaded Canter No.HR-39/7557 with oranges at Hansi for selling at Hisar Fatehabad and Sirsa. The canter was driven by Ramesh Kumar. At about 12.30 a.m. In the intervening night of 1-2 March 2004, when the canter reached the area of Sadar Fatehabad, two k.m. Ahead of Village Dhangar, on the G.T.Road, it developed a defect and was stopped on the left side on that katcha path. Its parking lights and indicators were switched on. In the meanwhile, a Tata-407, bearing registration No.RJ-31G, 1871 which was also loaded with oranges stopped on the request of Ramesh Kumar. The driver of Tata-407

*****

Satpal parked the canter ahead of canter No.HR-39/7557. Satpal and Ramesh opened the bonnet of canter No.HR-39/7557 for repairing the hose pipe. Meantime, a canter bearing registration No.HR-24GA/0228 came from Hisar side which was driven by respondent no.1 Balbir Singh and struck against the stationery canter of Ramesh Kumar. Both Ramesh Kumar and Satpal were run over by the canter and died on the spot. Rakesh and Purshotam sustained injuries in the accident.

Mrs.Panna Devi mother of Satpal deceased has filed a petition under Section 163-A of the Act seeking compensation of Rs.4,000,00/-. It was pleaded that Satpal was 25 years old and was a driver and was earning a monthly salary of Rs.3000/- per month, whereas widow and the minor children of Ramesh Kumar deceased has filed a petition under Section 166 of the Act seeking compensation of Rs.25,000,00/-, by pleading that Ramesh was 30 years old and used to sell fruits and earned income of Rs.10,000/- per month.

Upon notice, respondents no.1 and 2 pleaded that no accident had taken place with their canter bearing No.HR-24GA/0228 and the claim petition had been filed only to harass them. It was pleaded that in case, it was found that the canter was involved in the accident, then the Insurance Company (respondent no.3) was liable to pay the compensation.

Respondent no.3- the Insurance Company in its reply pleaded that it was canter No.HR-39/7557 which had crushed Ramesh and Satpal, therefore, the claim petition against canter No.HR-24GA/ 0228 was not maintainable. It was also pleaded that driver of canter No.HR-39/7557 was the originator and creator of the accident.

*****

On the pleadings of the parties, the following issues were framed:-

1. Whether the accident took place due to rash and negligent driving of Canter No.HR-24GA/ 0228 by respondent no.1 Balbir Singh? OPP
2. Whether Smt. Panna Devi (MACT case No.54 of 2004) is entitled to compensation on account of death of Satpal, if so, how much and from whom?OPP
3. Whether the petitioners of MACT case No.52 of 2004) are entitled to compensation on account of death of Ramesh Kumar, if so, how much and from whom?OPP
4. Whether the claim petitions are not maintainable? OPR
5. Relief.

Both the parties adduced evidence in respect of their claims set up in the claim petitions.

After evaluating the evidence of the parties, the Tribunal returned the finding on issue no.1 against respondent no.1 and in favour of the claimants.

Through this appeal, the legal heirs of Ramesh Kumar have approached this court and have prayed that the compensation be awarded as claimed in the claim petition alongwith interest @ 12% instead of 6%. It has also been pleaded that the multiplier of 18 was required to be applied by the Tribunal instead of 16.

Learned counsel for the appellants contended that the learned Tribunal has erred in taking into consideration the income of Ramesh Kumar deceased as Rs.2500/- per month despite the fact that there is clear

cut statement of his widow that her husband use to sell fruits and his monthly income was Rs.10,000/- per month. I do not find any merit in the contention of the learned counsel for the appellants for the reasons that appellant Sunita Devi has categorically stated that her husband used to maintain account books, but no such account-book had seen the light of the day. Thus, non-production of the account-books before the Tribunal, which according to the appellants deceased used to maintain during his life time was the best evidence which could have been produced by them, raises an adverse inference against the appellants that income of the deceased was not Rs.10,000/- per month as claimed by them in the claim petition. In the absence of any documentary evidence, the Tribunal has no other option but to assess the income of the deceased as Rs.2500/- per month. The Tribunal has adopted a liberal attitude while deducting 1/4th amount towards personal expenses of the deceased, therefore, it does not lie in the mouth of the claimants- appellants to state that the income of the deceased was Rs.10,000/- per month.

Another contention of the learned counsel for the appellant that multiplier of 16 was adopted while granting compensation, whereas in the instant case multiplier of 18 should have been adopted. This contention lacks merit for the reason that in the case of a labourer, the multiplier of 16 is adopted as per the catena of the authorities rendered by the Apex Court. This is not the case of the appellants that the deceased was a skilled worker. Had he been a skilled worker in that event there would be some force in the contention of the learned counsel for the appellants but that is not the case of the appellant before the Tribunal as well as before this court. The

*****

Tribunal has also rightly granted funeral expenses and transportation charges to the claimants.

In the claim petition, the Tribunal has rightly awarded compensation after assessing the income of the deceased. I find no ground to enhance the compensation in the appeal. Hence, there is no merit in this appeal and the same is dismissed in limine.

14.8.2007. (R.S.Madan)
vs. Judge.